

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL ALLEN RONDO,

Defendant-Appellant.

UNPUBLISHED
September 14, 2010

No. 292204
Tuscola Circuit Court
LC No. 08-010982-FH

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Rondo contends there was insufficient evidence to sustain his conviction of assaulting, resisting, or obstructing a police officer¹ and claims ineffective assistance of counsel. Rondo also asserts error in the use of his prior conviction for false pretenses for purposes of impeachment. We affirm his conviction and sentence.²

Evidence is sufficient when a rational fact finder could determine that the prosecution proved every element of the crimes charged beyond a reasonable doubt.³ Direct and circumstantial evidence, including any reasonable inferences, can prove an element of an offense equally well.⁴ The evidence must be viewed in the light most favorable to the prosecution.⁵ We review claims of insufficient evidence de novo.⁶

¹ MCL 750.81d(1).

² Rondo was sentenced as a second habitual offender to 18 to 36 months' imprisonment. MCL 769.10. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

³ *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

⁴ *Id.* at 400.

⁵ *People v Hardiman*, 466 Mich 417, 420-421; 646 NW2d 158 (2002).

⁶ *People v Lueth*, 253 Mich App 670, 680; 666 NW2d 322 (2002).

To be convicted of obstructing a police officer requires proof beyond a reasonable doubt that (a) defendant obstructed a police officer while in the performance of his official duties, and (b) defendant knew or had reason to know that the person he obstructed was a police officer.⁷ Flight during a police investigation may constitute obstructing.⁸

Testimony from police officer Michael Mitin and an eyewitness indicated that they observed Rondo running away after Mitin told him to stop. While Rondo contends that he may not have known that Mitin was performing his duties at the time, evidence was presented that Mitin was driving a marked police car and was dressed in uniform. It is presumed that a defendant knows or has reason to know a police officer is acting in the performance of his duties when the officer is in full uniform with a marked patrol vehicle.⁹ Based on the record evidence, Rondo's claim of insufficient evidence fails.

Rondo also asserts that his trial attorney committed three errors that rendered him constitutionally ineffective at trial. Rondo specifically argues that (a) defense counsel failed to cross examine Mitin concerning prejudicial and perjured testimony; (b) that counsel failed to move for a mistrial after perjured testimony was presented into evidence; and (c) that counsel convinced him not to testify on his own behalf due to the belief that he could be impeached pursuant to MRE 609 by evidence of his conviction of a prior offense. Because Rondo failed to make a motion for a new trial or evidentiary hearing at the trial court level, his claim of ineffective assistance is unpreserved and reviewed only to the extent that the alleged mistakes are apparent on the record.¹⁰

To establish a claim of ineffective assistance of counsel, it must be shown that (a) counsel's performance was below an objective standard of reasonableness under prevailing professional norms, (b) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (c) the resulting proceeding was fundamentally unreliable or unfair.¹¹ "Judicial scrutiny of counsel's performance must be highly deferential."¹² "Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases."¹³

⁷ MCL 750.81d(1); *People v Ventura*, 262 Mich App 370, 375-376; 686 NW2d 748 (2004).

⁸ *People v Nichols*, 262 Mich App 408, 411-412; 686 NW2d 502 (2004).

⁹ *Id.* at 413.

¹⁰ *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

¹¹ *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000); *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

¹² *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

¹³ *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008).

Rondo has not shown that his trial counsel provided ineffective assistance. The decisions of trial counsel not to examine a witness and to request a curative instruction rather than a mistrial are matters of trial strategy that will not be second-guessed by this Court.¹⁴ Rondo misconstrues MRE 609(a)(1) and mistakenly contends that evidence of a prior conviction was not admissible for purposes of impeachment, because he was only convicted of false pretenses under \$200. Counsel cannot be deemed ineffective for having properly advised Rondo that because his prior conviction contained an element of dishonesty or false statement that it was admissible for impeachment purposes under MRE 609.¹⁵

Affirmed.

/s/ Michael J. Talbot

/s/ Patrick M. Meter

/s/ Pat M. Donofrio

¹⁴ *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004) (citation omitted).

¹⁵ *People v Hicks*, 149 Mich App 737, 747; 386 NW2d 657 (1986).